STATE OF LOUISIANA DIVISION OF ADMINISTRATIVE LAW ETHICS ADJUDICATORY BOARD

BOARD OF ETHICS * DOCKET NO. 2020-8361-ETHICS-B

*

IN THE MATTER OF

AGENCY TRACKING NO. 5120-068

LUCIAN J. MCKINNEY, JR. * A

DECISION AND ORDER

The Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, requested an adjudicatory hearing to have the Ethics Adjudicatory Board determine whether Lucian J. McKinney, Jr., failed to file his 30-P and 10-P campaign finance disclosure reports by the sixth day after they were due, and his 10-G campaign finance disclosure report by the 11th day after it was due in connection with his 2020 candidacy for City Marshal, City Court, City of Ville Platte. The Louisiana Board of Ethics proved by clear and convincing evidence that Lucian J. McKinney, Jr., failed to file these reports as alleged. The Louisiana Board of Ethics is authorized to impose an additional civil penalty not to exceed \$10,000.00 against Lucian J. McKinney, Jr., for each report pursuant to Louisiana Revised Statutes (La. R.S.) 18:1505.4(A)(4)(a) and (b).

APPEARANCES

An adjudicatory hearing was conducted October 13, 2021, in Baton Rouge, Louisiana, before Panel B of the Ethics Adjudicatory Board (EAB). Charles Reeves appeared as counsel on behalf of the Louisiana Board of Ethics (BOE). Although duly noticed, Lucian J. McKinney Jr.,

¹ The Panel B of the Ethics Adjudicatory Board consists of Administrative Law Judges Gregory McDonald (presiding), Anthony Russo, and Esther Redmann.

(Respondent) did not appear for the hearing.²

JURISDICTIONAL AUTHORITY

This adjudication is conducted in accordance with the Campaign Finance Disclosure Act (CFDA), La. R.S. 18:1481, *et seq.*, the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the enabling legislation of the Division of Administrative Law, La. R.S. 49:991, *et seq.*

STATEMENT OF THE CASE

The BOE, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, alleged that Respondent failed to file three campaign finance disclosure reports by their deadlines in connection with his 2020 candidacy for City Marshal, City Court, City of Ville Platte.

The BOE requested that the EAB conduct an adjudicatory hearing to determine whether Respondent failed to file his 30-P and 10-P reports by the sixth day after they were due, and his 10-G report by the 11th day after it was due, which could subject him to an additional civil penalty not to exceed \$10,000.00 for each report, pursuant to La. R.S. 18:1505.4(A)(4)(a) and (b).³

At the hearing, the BOE offered its exhibits, numbered BOE-1 through BOE-17, which were admitted into evidence. Counsel presented the case on behalf of the BOE, the record was closed, and the matter was taken under advisement for a determination of whether Respondent violated La. R.S. 18:1495.4(B)(3), La. R.S. 18:1495.4(B)(4), and La. R.S. 1495.4(B)(5) and would

² On May 28, 2021, a notice of hearing was mailed by the Administrative Hearings Clerk for the Division of Administrative Law to Lucian J. McKinney, Jr., at: 1529 Anita Street, Ville Platte, Louisiana, 70586-4103. On August 3, 2021, an *Order of Continuance* rescheduling the hearing for October 13, 2021, was mailed by the Administrative Hearings Clerk for the Division of Administrative Law to Lucian J. McKinney, Jr., at: 1529 Anita Street, Ville Platte, Louisiana, 70586-4103. This is the same address the BOE mailed Respondent the charges contained in its *Request for Hearing* and its *Amended Request for Hearing*, its *Late Fee Assessment Orders*, its discovery, and its letter scheduling a Rule 10.1 discovery conference, all by certified mail, returned receipt requested, and the BOE received the certified mail receipts signed by Respondent. *See* BOE exhibits 6, 7, 8, 9, 10, 12, 13, and 14.

³ The BOE's original *Request for Hearing*, filed on October 16, 2020, alleged the failure of Respondent to file the 30-P campaign finance disclosure report. The BOE filed an *Amended Request for Hearing* on January 19, 2021, adding allegations that Respondent failed to file the 10-P and 10-G campaign finance disclosure reports.

therefore be subject to additional civil penalties pursuant to La. R.S. 18:1505.4(A)(4)(a) and (b) for each late report.

FINDINGS OF FACT

Respondent qualified as a candidate for the office of City Marshal, City Court, City of Ville Platte, in a primary election held July 11, 2020.⁴ The primary election was originally scheduled for April 4, 2020, was rescheduled for June 20, 2020, and rescheduled again for July 11, 2020, under Governor Edwards's Proclamations 28 JBE 2020, signed March 13, 2020, and 46 JBE 2020, signed April 14, 2020, because of the imminent threat posed by the coronavirus (COVID-19).⁵ The office of City Marshal, City Court, City of Ville Platte is a "district" level office, as it is a parish-wide elected office.⁶ Respondent was defeated in the primary election and, as such, did not participate in the general election.⁷

Respondent was required to file a campaign finance disclosure report 30 days prior to the originally scheduled primary election of April 4, 2020, (also known as a 30-P), due on March 5, 2020. Respondent was required to file a campaign finance disclosure report 10 days prior to the primary election (also known as the 10-P), due on July 1, 2020, in connection with the rescheduled primary election of July 11, 2020. Respondent was required to file a campaign finance disclosure report 10 days prior to the general election (also known as the 10-G report), due on August 5, 2020, in connection with the rescheduled general election of August 15, 2020. 10

The BOE is the Supervisory Committee on Campaign Finance Disclosure under the

⁴ See BOE-2; BOE-3, p. 1. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he was a candidate for the office of City Marshal, City Court, City of Ville Platte; see BOE-12, p. 3, and BOE-13, p. 3.

⁵ See BOE-5.

⁶ See BOE-4, p. 3.

⁷ BOE-3, p. 1.

⁸ See BOE-4, p. 1. The deadline to file the 30-P campaign finance disclosure report by March 5, 2020, was not changed because it occurred before the Governor issued the proclamations that rescheduled the April 4, 2020, primary election.

⁹ See BOE-4, p. 2, the schedule of filing dates for the rescheduled election of July 11, 2020.

¹⁰ *Id*.

CFDA.¹¹ Election candidates, when qualifying at their respective clerks of court, are provided with a *Schedule of Reporting and Filing Dates for Candidates (Schedule*).¹² The *Schedule* informed Respondent that the 30-P report was due March 5, 2020. The revised *Schedule* stated that the 10-P report was due July 1, 2020, and the 10-G report was due on August 5, 2020.¹³ Upon qualifying to run for office, Respondent also acknowledged that he was subject to the provisions of the CFDA.¹⁴

Respondent did not file the required 30-P report by the due date, March 5, 2020, or by the sixth day after the report was due. ¹⁵ On June 30, 2020, the BOE issued a *Late Fee Assessment Order* and assessed a fine of \$2,000.00 because Respondent failed to file his 30-P report. ¹⁶ The *Late Fee Assessment Order* was sent by certified mail, return receipt requested, to Respondent at his address at 1529 Anita Street, Ville Platte, Louisiana, 70586, and the BOE received the receipt signed by Respondent. ¹⁷ Respondent was notified in the letter accompanying the order that he could be subject to an additional civil penalty of \$10,000.00, pursuant to La. R.S. 18:1505.4(A)(4), if he failed to file the 30-P report. ¹⁸

Respondent did not file the required 10-P report by the due date, July 1, 2020, or by the sixth day after the report was due. On November 2, 2020, the BOE issued a *Late Fee Assessment*

¹¹ La. R.S. 18:1483(19).

¹² BOE-4.

¹³ *Id.* at p.2.

¹⁴ BOE-2, p. 5. The Campaign Finance Disclosure Act, La. R.S. 18:1481, *et seq.*, also provides the same schedule of reports due. *See* La. R.S. 18:1495.4(B)(3)-(5).

¹⁵ BOE-8. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he did not file a 30-P campaign finance disclosure report in connection with the July 11, 2020, primary election for the office of City Marshal, City Court, City of Ville Platte; *see* BOE-12, p. 3.

¹⁶ BOE-8.

¹⁷ *Id*.

¹⁸ *Id.* at p. 1.

¹⁹ BOE-9. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he did not file a 10-P campaign finance disclosure report in connection with the July 11, 2020, primary election for the office of City Marshal, City Court, City of Ville Platte; *see* BOE-13, p. 3.

Order and assessed a fine of \$2,000.00 because Respondent failed to file his 10-P report.²⁰ The Late Fee Assessment Order was sent by certified mail, return receipt requested, to Respondent at his address at 1529 Anita Street, Ville Platte, Louisiana, 70586, and the BOE received the receipt signed by Respondent.²¹ Respondent was notified in the letter accompanying the order that he could be subject to an additional civil penalty of \$10,000.00, pursuant to La. R.S. 18:1505.4(A)(4), if he failed to file the 10-P report.²²

Respondent did not file the required 10-G report by the due date, August 5, 2020, or by the 11th day after it was due.²³ On November 2, 2020, the BOE issued a *Late Fee Assessment Order* and assessed a fine of \$2,000.00, because Respondent failed to file his 10-G report.²⁴ The *Late Fee Assessment Order* was sent by certified mail, return receipt requested, to Respondent at his address at 1529 Anita Street, Ville Platte, Louisiana, 70586, and the BOE received the receipt signed by Respondent.²⁵ Respondent was notified in the letter accompanying the order that he could be subject to an additional civil penalty of \$10,000.00, pursuant to La. R.S. 18:1505.4(A)(4), if he failed to file the report.²⁶

On October 16, 2020, the BOE propounded written discovery to Respondent, including *Requests for Admissions*, to admit or deny the he failed to file his 30-P campaign finance disclosure report.²⁷ On October 19, 2020, Respondent acknowledged that he received the discovery.²⁸ On January 19, 2021, the BOE propounded additional written discovery to Respondent, including

²⁰ BOE-9.

²¹ *Id*.

²² *Id.* at p. 1.

²³ BOE-10. Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he did not file a 10-G campaign finance disclosure report in connection with the July 11, 2020, primary election for the office of City Marshal, City Court, City of Ville Platte; *see* BOE-13, p. 3.

²⁴ BOE-10.

²⁵ Id.

²⁶ *Id.* at p. 1.

²⁷ BOE 12.

²⁸ *Id.* at p. 7.

Requests for Admissions, to admit or deny the he failed to file all three of the reports, his 30-P, 10-P, and 10-G campaign finance disclosure reports.²⁹ On January 21, 2021, Respondent acknowledged that he received the second set of discovery requests.³⁰

On February 18, 2021, the BOE requested Respondent participate in a Rule 10.1 Discovery Conference because Respondent did not respond to the BOE's discovery requests.³¹ The BOE's request for a Rule 10.1 Discovery Conference was sent by certified mail, return receipt requested, to Respondent's address at 1529 Anita Street, Ville Platte, Louisiana, 70586, and the BOE received the receipt signed by Respondent.³²

As of October 12, 2021, Respondent had not filed his 30-P, 10-P, or 10-G campaign finance disclosure reports and had not filed responses to the *Requests for Admissions*. 33

CONCLUSIONS OF LAW

The BOE proved by clear and convincing evidence that Respondent knowingly failed to file his 30-P and 10-P campaign finance disclosure reports by the sixth day after they were due, and his 10-G campaign finance disclosure report by the 11th day after it was due. The BOE is authorized to impose upon Respondent an additional civil penalty not to exceed \$10,000.00 for each report, as allowed by La. R.S. 18:1505.4(A)(4)(a) and (b).³⁴

In hearings under the CFDA before the EAB, the BOE must prove by clear and convincing

²⁹ BOE-13.

³⁰ *Id.* at p. 8.

³¹ BOE-14.

³² *Id.* at p. 2.

³³ BOE-11 and BOE-17. Respondent admitted, by operation of La. C.C.P. art. 1467(A) that he did not file his 30-P, 10-P, and 10-G campaign finance disclosure reports; *see* BOE-12 and BOE-13.

³⁴ La. R.S. 18:1505.4(A)(4)(a) and (b) of the CFDA provides that, if after conducting an adjudicatory hearing, the EAB determines that a candidate knowingly failed to file the required 30-P report, or filed the 30-P report more than six days late, knowingly failed to file the required 10-P report, or filed the 10-P report more than six days late, and knowingly failed to file the required 10-G report, or filed the 10-G report more than 11 days late, then the BOE, functioning as the Supervisory Committee on Campaign Finance Disclosure, may impose upon the candidate additional civil penalties not to exceed \$10,000.00 for each report.

evidence that the candidate knowingly failed to file a required campaign finance disclosure report.³⁵ Every candidate (or his campaign treasurer) for a district office is required to file certain campaign finance disclosure reports by the statutory deadlines.³⁶ Failure to timely submit required reports constitutes a violation of the CFDA.³⁷

The office of City Marshal, City Court, City of Ville Platte is a "district" level office. ³⁸ As a candidate for a district level office, Respondent was required to file a 30-P report by the 30th day prior to the primary election, ³⁹ which was March 5, 2020. Respondent was required to file a 10-P report by the 10th day prior to the primary election, ⁴⁰ which was July 1, 2020, and a 10-G report by the 10th day prior to the general election, ⁴¹ which was August 5, 2020. As of October 12, 2021, Respondent had not filed his 30-P, 10-P, or his 10-G campaign finance disclosure reports.

Any candidate for "district" office (or his campaign treasurer) who knowingly fails to timely file a required report may be assessed a civil penalty in the amount of \$60.00 per day, not to exceed \$2,000.00.⁴² "Knowingly and willfully," means conduct which could have been avoided through the exercise of due diligence.⁴³

Respondent knew he was required to file certain campaign finance disclosure reports when he acknowledged he was subject to the CFDA upon qualification for candidacy. Respondent was provided the deadlines to file his campaign finance disclosure reports in the *Schedules*, which stated the 30-P campaign finance disclosure report was due March 5, 2020, the 10-P report was

³⁵ La. R.S. 42:1141.5(C). "Clear and convincing evidence', in general, means that the fact of guilt must be proven to a greater degree than by 'a mere preponderance of the evidence' but less than by 'beyond a reasonable doubt." *Louisiana State Bar Ass'n v. Edwins*, 329 So. 2d 437, 442 (La. 1976).

³⁶ La. R.S. 18:1495.4(A).

³⁷ La. R.S. 18:1505.1(B).

³⁸ La. R.S. 18:1483(11); La. R.S. 18:1484(1).

³⁹ La. R.S. 18:1495.4(B)(3).

⁴⁰ La. R.S. 18:1495.4(B)(4).

⁴¹ La. R.S. 18:1495.4(B)(5).

⁴² La. R.S. 18:1505.4(A)(2)(a)(ii).

⁴³ La. R.S. 18:1505.5.

due July 1, 2020, and the 10-G report was due July 11, 2020.

On June 30, 2020, the BOE issued a *Late Fee Assessment Order* and assessed a civil penalty in the maximum amount of \$2,000.00, because Respondent knowingly failed to file his 30-P report. On November 2, 2020, the BOE issued a *Late Fee Assessment Order* and assessed a civil penalty in the maximum amount of \$2,000.00, because Respondent knowingly failed to file his 10-P report. Also on November 2, 2020, the BOE issued a *Late Fee Assessment Order* and assessed a civil penalty in the maximum amount of \$2,000.00, because Respondent knowingly failed to file his 10-G report. These assessments are not before the EAB.

In the letters accompanying the *Late Fee Assessment Orders*, the BOE notified Respondent that he could be subject to additional civil penalties not to exceed \$10,000 per report, pursuant to La. R.S. 18:1505.4(A)(4), for failing to file his 30-P, 10-P, and 10-G reports. Respondent knew he was obligated to meet the CFDA filing requirements by the statutory deadlines and that additional civil penalties not to exceed \$10,000.00 per report could be imposed if he did not file his 30-P, 10-P, and 10-G reports. As of October 12, 2021, Respondent failed to file his 30-P, 10-P, and 10-G reports. Therefore, Respondent's 30-P and 10-P reports are more than six days late, and his 10-G report is more than 11 days late. The BOE proved by clear and convincing evidence that Respondent knowingly failed to file his 30-P and 10-P reports by the sixth day after they were due and his 10-G report by the 11th day after it was due.

Additionally, Respondent's failure to file his 30-P, 10-P, and 10-G campaign finance disclosure reports within three days after the final date for filing creates a rebuttable presumption of intent to not file the report.⁴⁴ Nothing in evidence rebuts this statutory presumption that Respondent intentionally failed to file his 30-P, 10-P, and 10-G campaign finance disclosure

⁴⁴ La. R.S. 18:1505.1(A).

reports.

If, after conducting an adjudicatory hearing, the EAB determines that Respondent

knowingly failed to file required campaign finance disclosure reports by the sixth and the 11th day

after the reports were due, respectively, then the BOE may impose an additional civil penalty, not

to exceed \$10,000.00, against Respondent for the report that he failed to timely file. 45

The BOE proved by clear and convincing evidence that Respondent, a candidate for a

"district" level office, knowingly violated the CFDA by failing to file his 30-P, 10-P, and 10-G

campaign finance disclosure reports by the statutory deadlines and by the sixth day and 11th day

after the reports were due, respectively.

The BOE, in its capacity as the Supervisory Committee for Campaign Finance Disclosure,

is authorized to impose against Respondent an additional civil penalty under authority of La. R.S.

18:1505.4(A)(4)(a) and (b), not to exceed \$10,000.00 for each report.

[SPACE INTENTIONALLY LEFT BLANK-ORDER TO FOLLOW]

-

⁴⁵ La. R.S. 18:1505.4(A)(4)(a) and (b).

9

ORDER

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory

Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty

not to exceed \$10,000.00 against Lucian J. McKinney, Jr., for failing to file his 30-P campaign

finance disclosure report by the sixth day after it was due.

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory

Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty

not to exceed \$10,000.00 against Lucian J. McKinney, Jr., for failing to file his 10-P campaign

finance disclosure report by the sixth day after it was due.

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory

Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty

not to exceed \$10,000.00 against Lucian J. McKinney, Jr., for failing to file his 10-G campaign

finance disclosure report by the 11th day after it was due.

Rendered and signed on November 9, 2021, in Baton Rouge, Louisiana.

Presiding Administrative Law Judge

My M. M. Onl

Ethics Adjudicatory Board – Panel B

Anthony J Russo

Administrative Law Judge

Ethics Adjudicatory Board – Panel B

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Tuesday, November 09, 2021, I have sent a copy of

this decision/order to all parties of this matter.

other A. Redmann Esther A. Redmann

Administrative Law Judge

Ethics Adjudicatory Board – Panel B

Clerk of Court Division of Administrative Law

10

REVIEW RIGHTS

This decision exhausts your administrative remedies. If you are dissatisfied with this ruling, you may have the right to seek a rehearing or reconsideration of this decision or order, subject to the grounds for and time limitations provided in Louisiana Revised Statutes (La. R.S.) 49:959 and Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly.

To request a rehearing or reconsideration, please send it to one of the addresses indicated below:

EMAIL documents to: EABprocessing@adminlaw.la.gov

FAX documents to: EAB Section Deputy Clerk (225) 219-9820 MAIL documents to:
DAL – EAB Section
ATTN: EAB Section
P. O. Box 44033
Baton Rouge, LA 70804-4033

If you do not request a rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 49:964, La. R.S. 42:1142(A)(1), and La. C.C.P. art 5059. To determine your review rights, you should act promptly.